

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

WRIT PETITION NO. 576 OF 2004

Office Note, Office Memoranda
of Quorum, appearances, Court's
orders or directions and
Registrar's orders.

Court's or Judge's Orders

Mr. A. Palekar, advocate for the
petitioners.

CORAM : B. H. MARLAPALLE, J.

DATE : 17th December, 2004.

P.C.:

Heard Mr. Palekar, learned
advocate for the petitioners, who
are defendants in Regular Civil Suit
No.27/2003. In the said Civil Suit
a Civil Misc. Application
no.91/2003 was filed by the
plaintiff before the learned Civil
Judge, Junior Division at Pernem and
the Court was pleased to order
status quo. Not being satisfied
with the order of status quo the
plaintiff filed Misc. Civil Appeal
No.20/2004, which has been allowed
by the learned ad-hoc Additional
District (Fast Track Court) at
Mapusa. While setting aside the
order of status quo passed by the

trial Court, the lower Appellate Court has restrained the defendants from interfering in the suit property, except for residing in the house possessed by them and located in the suit property. The defendants are, therefore, before this Court.

2. The learned advocate for the defendants submitted that they had denied the title of the plaintiff Dr. Susan Szilagyi Lad to the suit property on the ground that she was not the wife of the original land owner, i.e. Jaiwant, s/o Anant Lad. It is evident that the power of the Court was also questioned to entertain an application for injunction on the grounds that the issue of tenancy was pending before the competent authority and the Court did not have the jurisdiction to try the suit. It was also contended that the plaintiff was not in possession of the suit property.

3. The Court noted that the plaintiff had submitted marriage certificate as a proof of her marriage with Jaiwant Anant Lad and also copy of the Gift Deed dated 22nd October, 1935, by which the plaintiff's in-laws had gifted the suit property to her husband. The name of the late husband of the plaintiff was also entered in the occupants column of the record of rights in respect of the suit property and this entry was made much before 1995. The name of the defendant no.1 on the other hand is entered in the tenant's column of the record of rights on or about 27th April, 1995, on account of the order passed by the Joint Mamlatdar. However, the said order was set aside and ultimately, pursuant to the order passed by this Court in Writ Petition No.306/2002 the issue of tenancy is still pending. the lower Appellate Court on the basis of the documents recorded a prima facie finding that the plaintiff is

the owner of the suit property and the ownership followed the possession. While holding so, the lower Appellate Court also noted that except for the affidavit there was no proof submitted by the defendants even prima facie, in support of their contentions that they were in possession of the suit property, except the house which they are occupying.

4. Having considered the arguments advanced and the reasoning given by the lower Appellate Court in support of the impugned Order, there is no case made out for interference in the said order under the supervisory powers of this Court. Hence the petition must fail. The same is hereby rejected summarily.

B. H. MARLAPALLE, J.